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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/589,200

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Laurent Arghyris

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EXAMINER

BAINBRIDGE, ANDREW PHILIP

ART UNIT

PAPER NUMBER

3754

MAIL DATE

DELIVERY MODE

12/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/589,200	Applicant(s) ARGHYRIS ET AL.	
	Examiner ANDREW P. BAINBRIDGE	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. **Claims 1-6 and 8-12 are rejected under 35 U.S.C. 103(a)** as being unpatentable over US 4,469,250 (Evezich) in view of US 3,606,089 (C.D. Chambers).

4. Evezich in figures 1-4 discloses a deformable flexible pouch 12 to hold liquid or pasty fluid products (col. 2, lines 30-40) which is connected to a rigid frustoconical upper concave portion 13 near the flange 14 that forms an opening 16 for a liquid dispensing passage (see figures 1-2) the flexible pouch positioned within a resilient container 32 during dispensation is squeezed, thereby squeezing the chamber surrounding the flexible pouch 12 such that material is squeezed out of the flexible bag 12 through the neck passage 16 and out of the container 25, and upon releasing the resilient container 32, the resilient container returns to its original shape, which forms a partial vacuum

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around the flexible pouch 12, which is enough of a vacuum to force open the check valve with a flap 36 to let air in between the resilient container 32 and the flexible pouch 12, the rigid upper concave portion 13 has a flange 14 that has a wider circumference than the flexible pouch 12 which is drawn closer and closer to the upper shoulder 13 as the flexible pouch 12 is dispensed, the periphery flange 14 resting on a shoulder formed in the inner wall of the bottle 22,27.

Evezich does not teach a concertina in the pouch that folds into the upper shoulder as the pouch shrinks, the concertina being greater diameter than the neck of the pouch, the flexible pouch in a rigid bottle and a manual pump without an air inlet, with an air circuit with transverse grooves formed on the periphery of the base of the upper rigid part of the pouch in the zone of articulation between the upper and lower parts of the pouch, the vent for the container having a filter, the pump body being fastened at the orifice of the rigid bottle by conventional means above the pouch.

Chambers in figures 1-7 teaches a concertina (see figures 1-2) in the sack 40 that folds into the upper shoulder as the material is dispensed, the concertina having a greater diameter than the neck 44 of the pouch 40, with a rigid bottle 10 and a manual pump 34,38 (col. 2, lines 45-72) without an air inlet (see figures 1-3), with an air circuit 52 with transverse grooves (see figure 3) that go over the upper shoulder 46 and down into the space 10a between the outer bottle 10 and the flexible bag 40 the pump body 34,38 is attached to the container 10 by conventional means, such as by crimping 23. It would be obvious to one of ordinary skill in the art to adapt Chambers to Evezich because Chambers solves several problems for Evezich including a concertina to

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ensure that the bag collapses in a way that little material as possible remains in the flexible bag at the end of dispensation, and the air circuit provides a way to get air in the container from the top if necessary, such as during the original filling of the container.

Although neither reference explicitly claims a filter for the air check valve, filters for air valves are widely known in the art, and are an example of routine design choice. It would be obvious to one of ordinary skill in the art to add a filter to the air intake valve because filters for air valves are widely known in the art and their value for keeping the entering air as clean as possible is widely known and understood in the art.

5. **Claim 7 is rejected under 35 U.S.C. 103(a)** as being unpatentable over Evezich in view of Chambers as applied in claim 1 and further in view of US 3,620,420 (Norman) and US 5,123,571 (Rebeyrolle et al.).

6. Evezich in view of Chambers as applied in claim 1 has all of the elements of claim 7 except for a concave lower end of the dispensing pouch with a supporting cross member that extends along a diameter. Norman in figures 1-14 teach a rigid concave shaped base member 4 for a flexible pouch 2, but does not teach a reinforcing diametrical cross member. Rebeyrolle in figures 14-15 teaches a reinforcing member 90 that extends from one end of the collapsing bag 4 to the other end (see figure 15). It would be obvious to one of ordinary skill in the art to adapt Rebeyrolle to the Evezich device because Rebeyrolle teaches additional way to ensure that the bottom of the bag is strong enough to collapse in on itself in a way that would leave excessive material trapped in the flexible bag.

Response to Arguments

7. Applicant's arguments filed 7/27/2009 have been fully considered but they are not persuasive in whole. The examiner's objections to the claims noted in the non-final office action dated 4/28/2009 are cured by the Applicant's amendments to the original claims and are hereby withdrawn. Regarding the amended claims, it appears from reviewing the Applicant's arguments that the applicant believes that by amending the independent claim 1 to read "wherein the flexible lower part of the pouch has one contraction" (claim 1, lines 7-8) that the claims are thereby restricted to a device that has one and only one contraction in the pouch. However, that is not accurate because claim 1 describes "a deformable flexible pouch for liquid or pasty fluid *comprising*" many (Italics added for emphasis) additional elements, and since the word "comprising" does not restrict a device to have the recited elements and only those elements, merely that the device must *include* at least the recited elements.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Both Demel (US 5,718,334) and Cogger et al. (US 5,934,500) show flexible pouches with only one contraction (elements 68 in figure 2 of both references), and Gueret (US 5,370,272) shows a great example of a pump akin to the ones described in the Applicant's specification.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW P. BAINBRIDGE whose telephone number is (571)270-3767. The examiner can normally be reached on Monday to Thursday, 9:30 AM to 8:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. P. B./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art
Unit 3754